

# **THE LEGAL POSITION OF PEOPLE WITH AN INTELLECTUAL DISABILITY: FROM RESTRICTION TO DEVELOPMENT**

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An important principle in international Health Law is the right to self-determination. This right has to be protected as much as possible. In the Netherlands, the right to self-determination is also the core of the health care system: a client has to decide for himself how he will shape his life. It is not an issue if a client has a psychiatric disorder or an intellectual disability. They all have the same rights. In this presentation the central question is: 'is the legal position of people with an intellectual disability best protected if self-determination is the focus?' This question will be answered by looking at one specific theme: freedom restriction.

The Psychiatric Hospitals Act allows care providers to limit the right to self-determination. This Act creates the legal framework for applying freedom restriction in the care for people with an intellectual disability. The emphasis is on the right to self-determination: freedom restriction is only allowed if a client constitutes a danger to himself or to his environment. Research shows that the Psychiatric Hospitals Act does not benefit clients with an intellectual disability. Care providers find it difficult to work according to the strict principles of this Act. They feel that in many situations they are not allowed to intervene. In the care for people with an intellectual disability the emphasis must not only be on the right to self-determination, but also on providing good care and on the right to personal development. Care providers are, within the current legal framework, unable to provide the care they would like to give to clients, including freedom restriction. The object of providing good care is to offer a perspective to clients by applying the right combination of protection and self-determination. Freedom restriction can be an element of this type of care.

The conclusion of recent research is that, especially in the care for people with an intellectual disability, the emphasis should shift from the right to self-determination to a more balanced approach, taking into account other values (good care, protection) as well.